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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTONIO LAVON DOYLE,
Petitioner,
v.

WILLIAM GITTERE, *et al.*,
Respondents.

Case No. 3:00-cv-00101-RCJ-WGC

**ORDER DENYING MOTION
TO RECONSIDER ORDER
(ECF NO. 320)**

In this capital habeas corpus action, on May 23, 2018, the Court ruled on the respondents' motion to dismiss, granting it in part and denying it in part, and dismissed several of Petitioner Antonio Lavon Doyle's claims. See Order entered May 23, 2018 (ECF No. 301). A ground for the dismissal of claims was the statute of limitations.

On April 17, 2019, Doyle filed a Motion to Reconsider Order Dismissing Claims as Untimely (ECF No. 320). In that motion, Doyle requests reconsideration of the application of the statute of limitations in the May 23, 2018, order, arguing that the intervening decision of the Ninth Circuit Court of Appeals in *Williams v. Filson*, 908 F.3d 546 (9th Cir. 2018) (decided November 9, 2018), mandates equitable tolling such as to render his claims timely. Doyle argues in his motion, as he did in his opposition to his motion to dismiss, that the Court's scheduling orders and uncertainty in the law regarding the relation back of amended petitions warrants equitable tolling in his case, and he argues that *Williams* lends new support to that argument and in light of *Williams* the Court should reconsider dismissal of his claims on statute of limitations grounds. Respondents filed an opposition to the motion for reconsideration on May 17, 2019 (ECF No. 326), and Doyle replied on May 24, 2019 (ECF No. 328).

1 A district court possesses “inherent procedural power to reconsider, rescind, or
2 modify an interlocutory order for cause seen by it to be sufficient.” *City of Los Angeles v.*
3 *Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001) (citations and internal
4 quotation marks omitted); see also Fed. R. Civ. P. 60. However, reconsideration of a
5 prior order is an extraordinary remedy “to be used sparingly in the interests of finality
6 and conservation of judicial resources.” *Kona Enterprises, Inc. v. Estate of Bishop*, 229
7 F.3d 877, 890 (9th Cir. 2000) (citation omitted). “Whether or not to grant reconsideration
8 is committed to the sound discretion of the court.” *Navajo Nation v. Confederated Tribes*
9 *and Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003). However,
10 “a motion for reconsideration should not be granted, absent highly unusual
11 circumstances, unless the district court is presented with newly discovered evidence,
12 committed clear error, or if there is an intervening change in the controlling law.” *Marlyn*
13 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009)
14 (quoting *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999).

15 In the May 23, 2018, order, the Court described the procedural history relative to
16 the application of the statute of limitations to this case, as follows:

17 Doyle’s judgment of conviction became final on September 22,
18 1997, which was 90 days after the Nevada Supreme Court denied
19 rehearing on Doyle’s direct appeal. See Order Denying Rehearing, Exhibit
20 175 (ECF No. 173-10, p. 92); see also *Clay v. United States*, 537 U.S.
522, 528 n.3 (2003) (conviction final at expiration of 90-day period to seek
certiorari following decision of highest state court); *Bowen v. Roe*, 188
F.3d 1157, 1159 (9th Cir. 1999) (same).

21 Doyle timely filed his first state petition for writ of habeas corpus on
22 June 26, 1997, tolling the limitations period before it began to run. See
23 Petition for Writ of Habeas Corpus (Post-Conviction), Exhibit 176 (ECF
24 No. 174, pp. 2-41); see also 28 U.S.C. § 2244(d)(2). Doyle’s first state
25 habeas action concluded, and the statutory tolling ceased, on April 13,
2000, when the Nevada Supreme Court issued its remittitur after affirming
the denial of Doyle’s petition. See Remittitur, Respondents’ Exhibit 5 (ECF
No. 209-7). The limitation period for the filing of Doyle’s federal habeas
petition then began to run.

26 Doyle submitted his original *pro se* petition (ECF No. 4) for filing, to
27 initiate this case, on February 28, 2000. That petition was unquestionably
28 timely filed.

1 There was no statutory tolling of the limitations period by virtue of
2 the pendency of this federal habeas corpus action. See *Duncan v. Walker*,
3 533 U.S. 167, 181-82 (2001) (pendency of federal habeas corpus action
4 does not toll AEDPA limitations period). Therefore, absent equitable
5 tolling, the limitations period ran out on April 14, 2001.

6 Doyle did not file his first amended petition (ECF No. 168) until
7 May 14, 2008, more than seven years after the limitations period ran out.
8 His second amended petition was filed more than eight years after that, on
9 October 28, 2016 (ECF No. 265). Therefore, unless Doyle can show that
10 equitable tolling is warranted, the question of the timeliness of the claims
11 in his second amended petition turns upon whether the claims in that
12 petition relate back to the filing of his timely original petition.

13 Order entered May 23, 2018 (ECF No. 301), p. 11. And, with regard to the question of
14 equitable tolling, the Court stated:

15 Doyle argues, essentially, that he is entitled to equitable tolling
16 because he relied upon the Court's scheduling orders in determining when
17 to file his amended petition. See Opposition to Motion to Dismiss, pp. 4-
18 13. Instructions from a court do not serve as a basis for equitable tolling
19 unless the court "affirmatively misled" the petitioner. *Ford v. Piller*, 590
20 F.3d 782, 786-87 (9th Cir. 2009). There is no showing by Doyle that he
21 was affirmatively misled. The Court's scheduling orders granted leave for
22 Doyle to conduct discovery, set time limits for Doyle to do investigation
23 and conduct discovery, and set time limits for Doyle to file his amended
24 petition; those orders certainly were not extraordinary in any way, and they
25 did not make any statement about, or have any bearing on, the operation
26 of the statute of limitations. Doyle has not made any factual allegation, and
27 he has not proffered any evidence, suggesting otherwise.

28 Moreover, the United States Supreme Court decided *Mayle* [545
U.S. 644 (2005)] on June 23, 2005, holding that an amended habeas
petition does not relate back when it asserts a new ground for relief
supported by facts that differ in both time and type from those set forth in
the original pleading. *Mayle*, 545 U.S. at 650. If Doyle and his counsel
were under any misconception about whether new claims in an amended
petition would relate back to Doyle's original petition, *Mayle* cleared that
up. However, despite the import of *Mayle*, Doyle did not file his first
amended habeas petition until May 14, 2008, almost three years after
Mayle clarified the law regarding the relation back of claims in amended
habeas petitions.

Doyle has not shown that any extraordinary circumstance
prevented timely filing of his first and second amended habeas petitions.
See *Holland*, 560 U.S. at 649. Equitable tolling is not warranted.

Id. at 13.

Doyle now argues, essentially, that, under *Williams*, he should receive the benefit
of equitable tolling because he was misled by the Court's scheduling orders to believe
that new claims in his amended habeas petition would automatically be considered to

1 be in compliance with the statute of limitations, so long as the amended petition was
2 filed within the time allowed by the scheduling orders. See Motion to Reconsider (ECF
3 No. 32). Doyle's citation of *Williams* in support of his position is unconvincing. In
4 *Williams*, the petitioner filed his amended petition more than five years before the
5 Supreme Court decided *Mayle*. In this case, on the other hand, Doyle did not file his first
6 amended petition until almost three years after *Mayle* was decided. Doyle does not
7 demonstrate that equitable tolling is warranted during the delay from the Supreme
8 Court's decision in *Mayle* – which eliminated any confusion regarding the law governing
9 relation back of amended habeas petitions – and the filing of his first amended habeas
10 petition nearly three years later. The Court will deny Doyle's motion.

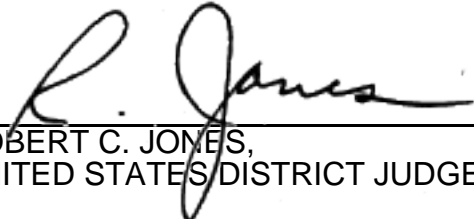
11 **IT IS THEREFORE ORDERED** that Petitioner's Motion for Reconsideration
12 (ECF No. 320) is **DENIED**.

13 **IT IS FURTHER ORDERED** that Respondents will have 30 days from the date of
14 this order to file a response to Petitioner's Reply (ECF No. 322), and a response to
15 Petitioner's Motion for Evidentiary Hearing (ECF No. 323).

16 **IT IS FURTHER ORDERED** that, in all other respects, the schedule for further
17 proceedings set forth in the order entered June 28, 2016 (ECF No. 258) will remain in
18 effect.

19 DATED: This 7th day of October, 2019.

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ROBERT C. JONES,
UNITED STATES DISTRICT JUDGE